THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.22990 of 1999

%10.09.2004

Lutheran High School, Jampeta, Rajahmundry (under the Management of AEL Church) Rep.by its Manager, Rev.Dr.G.Emmanuel.

...PETITIONER

Vs.

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1. The District Educational Officer, East Godavari, Kakinada.
2. The Regional Joint Director of School Education, East Godavari District, Kakinada.
3. The Commissioner and Director of School Education, A.P., Hyderabad.
4. The Government of Andhra Pradesh, Rep.by its Secretary, Education Department, Secretariat, Hyderabad.

The District Employment Exchange Officer, East Godavari, Kakinada.

...RESPONDENTS

! Counsel for the petitioner: MR.K.G.KRISHNA MURTHY

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

<Gist :

>Head Note:

? Cases referred:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.22990 of 1999

Between:

Lutheran High School, Jampeta, Rajahmundry (under the Management of AEL Church) Rep.by its Manager, Rev.Dr.G.Emmanuel.

...PETITIONER

AND

5. The District Educational Officer, East Godavari, Kakinada.

6. The Regional Joint Director of School Education, East Godavari District, Kakinada.

7. The Commissioner and Director of School Education, A.P., Hyderabad.

8. The Government of Andhra Pradesh, Rep.by its Secretary, Education Department, Secretariat, Hyderabad.

9. The District Employment Exchange Officer, East Godavari, Kakinada.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Certiorari calling for all the connected records including the impugned proceedings of R1 in Rc.No.76-A6/99 dated 26-10-99 and quash the same as illegal, improper, unjust, arbitrary and contrary to law and further direct respondents 1 and 2 to accord permission to fill up the posts of Records Assistant in the petitioner's Management by way of direct recruitment.

Counsel for the Petitioner: MR.K.G.KRISHNA MURTHY

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

The Court made the following:

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ORDER:

Lutheran High School, Jampeta in Rajahmundry, the petitioner herein sought permission to fill up three aided posts of Record Assistant by making an application on 28.10.1997. The District Educational Officer, Kakinada, the first respondent herein by proceedings dated 29.11.1997 accorded permission to the petitioner. However by another proceedings, dated 10.12.1997, the first respondent directed the management of the petitioner not to fill up the posts of Record Assistant until further orders. Later the petitioner was informed by proceedings dated 12.05.1999 that it has to obtain necessary clearance from the Department of Finance & Planning, Government of A.P. The petitioner, therefore, filed a Writ Petition being W.P.No.17018 of 1999 questioning the proceedings of the first respondent dated 12.05.1999. This Court disposed of the Writ Petition directing the first respondent to accord permission to fill up three vacancies to the post of Record Assistant left unfilled in the petitioner-school within two weeks from the date of receipt of a copy of the said order. The first respondent having considered the application of the petitioner dated 06.09.1999 passed impugned order informing the petitioner that there is no provision for direct recruitment to the post of Record Assistant and therefore, the application of the petitioner is rejected. Assailing the same, the present Writ Petition is filed.

A counter-affidavit is filed stating that the matter, whether an aided school can fill up the posts of Record Assistant by direct recruitment, was referred to the Government. The Government vide memo, dated 01.03.1999, permitted St.Anns Girls High School and St.Joseph Girls High School to fill up the posts of Record Assistant observing that the State and Subordinate Service Rules are not applicable to private aided educational institutions and that such institutions are covered by the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993 (‘the Rules’ for brevity). Subsequently, the Director also clarified the same and therefore, the

petitioner was informed to submit proposals as per the instructions.

Sri K.G.Krishna Murthy, learned counsel for the petitioner contends that the conditions of service and other aspects are governed by the Rules and the State and Subordinate Service Rules have no application to the private aided educational institutions. He also placed strong reliance on the Memo No.3838/P3-1/99-2 Education, dated 01.03.1999, wherein, Government clarified that the State and Subordinate Service Rules have no application to the private educational institutions.

Be that as it is, having regard to the said memo, learned Assistant Government Pleader was directed to apprise this Court regarding the latest policy of the Government in this regard. Learned Assistant Government Pleader has now produced Memo No.13405/PS-2/2004-2, dated 10.09.2004, which reads as under.

The attention of the Government Pleader for School Education, A.P. High Curt, Hyderabad is invited to the reference cited and he is informed that

i. The A.P. General Subordinate Service Rules are not applicable to Private and Aided Schools.

ii. Since the A.P. General Subordinate Service Rules are not applicable to Private and aided Schools, the Management can go for direct recruitment as laid down in Memo No.3858/PS-1/99-2, Dated 01.03.1999.

iii. There is no shift in the policy of the Government.

iv. The recruitment in Private and aided schools including compassionate appointment is governed by provisions in G.O.Ms.No.1, dated 01.01.1994.

In view of the above memo, it must be held that the impugned order of the first respondent is unsustainable and accordingly set aside. The Writ Petition is allowed directing the first respondent to accord permission to the petitioner to fill up the vacant posts of Record Assistant within a period of one week from the date of receipt of a copy of this order. There shall be no order as to costs.

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(V.V.S.RAO, J)

10th September 2004

NOTE: 1. LR copy be marked

2. CC by 17.09.2004

B/O

RRB

One Fair Copy to the Honourable Mr.Justice V.V.S.Rao (For His Lordships kind perusal)

Copy To:

1. The District Educational Officer, East Godavari, Kakinada.
2. The Regional Joint Director of School Education, East Godavari District, Kakinada.
3. The Commissioner and Director of School Education, A.P., Hyderabad.
4. The Secretary, Government of Andhra Pradesh, Education Department, Secretariat, Hyderabad.
5. The District Employment Exchange Officer, East Godavari, Kakinada.
6. Two CCs to G.P. for School Education, High Court Buildings, Hyderabad (OUT).
7. Eight LR copies.
8. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
9. The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad (OUT).
10. Two CD copies.